HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 735(S/S) 2005

Basant Ballabh Joshi S/o Parmanand Joshi,
Presently serving as Laboratory Bearer,
(Psychology) M.B. Degree College,
Haldwani, Nainital, --------- Petitioner.

Versus

1. State of Uttaranchal through
   Principal Secretary, Department of Higher Education,
   Uttaranchal Sashan, Dehradun,
2. Director, Higher Education, Uttaranchal,
   Haldwani, district Nainital,
3. Principal, M.B.P.G. College, Haldwani,
   District Nainital. ---------Respondents.

Sri K.K.Tewari, learned counsel for the petitioner.
Learned Standing Counsel for the State of Uttaranchal/respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri K.K. Tewari, learned counsel for the petitioner and learned Standing Counsel for the State Uttaranchal/ respondents.

2. The writ petition has been filed by the petitioner for the following reliefs:-

i Issue a writ, order or direction in the nature of mandamus to restrain the respondent from filling the vacancies on the post of Laboratory Assistant failing under promotion quota by direct recruitment,

ii Issue a writ, order or direction in the nature of mandamus commanding the respondents to consider the claim of the petitioner for promotion to the post of

Laboratory Assistant in accordance with the G.O. dated 2.9.03,

iii Issue any other order or direction, which this Hon'ble Court may deem fit and proper under the circumstances of the case,

iv Award cost of the petition in favour of the petitioner.

3. The petitioner has challenged the advertisement dated 12.05.2005 issued by the Director, Higher Education Uttaranchal, Haldwani by which applications were invited for filling up the vacancies of Group- C posts.

4. Submission of the learned counsel for the petitioner is that the petitioner is working in the Institution as Class-IV employee since 1980 and is entitled to be promoted in Group-C category under 25% quota provided by Govt. Order dated 02.09.2003.

5. The respondents have filed counter affidavit. In para-9 of the counter affidavit it has been averred by the respondents that "out of a total strength of 138 posts of Clerks in Group-C at lowest grade of Rs. 3050-4590 in the Department, 25% (35 in number) have been promoted from Group-D and everyone so promoted is senior to the petitioner."

6. Consequently, the petitioner cannot be promoted at this stage under 25% quota, since the quota is already compete. It is submitted by learned counsel for the petitioner that the petitioner is the senior- most amongst Class-IV employees working with the Department.

7. Under these circumstances, it is expected from the respondents that whenever, that post is fell vacant under the quota, the petitioner's case shall be considered by the respondents for promotion to Class-III post.

8. With this direction, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

June 9, 2006:
NCM: